In the High Court of Judicature at Madras

Dated: 03/12/2002

Coram

The Hon'ble Mr. Justice R. JAYASIMHA BABU
and
The Hon'ble Mrs. Justice PRABHA SRIDEVAN

Letters Patent Appeal No. 79 of 1999

E.K. Haj Mohammadmeera Sahib
and sons,
Big Agraharam,
Erode - 5. ... Appellant

-vs-

The Regional Director,
Employees State Insurance
Corporation,
143, Sterling road,
Chennai - 34 ... Respondents

Appeal under clause 15 of the Letters Patent to set aside the order of this Court dated 6.10.98 made in C.M.A. No. 67 of 1989.

!For appellant : Mr. Ravindran

^For respondent : Mr. G.Desappan

:J U D G M E N T

(Judgment of the Court was
delivered by R. JAYASIMHA BABU, J.)

The employer is in appeal. The employer contends that the wages paid to casual labour employed in unloading raw hides and skins brought to its factory premises by the transporter is not an expenditure on which an employer is liable to pay any contribution. The employer claims that it is the driver of the lorry who brings workmen required for unloading the raw hides and skins, such unloading being done within the premises of the factory and that the transportation charges which includes the payments to be made to those labourers is paid to the driver who in turn disburses the wages to the casual labourers employed for the purpose of unloading.

2. The learned single Judge has disbelieved the claim of the appellant that the casual labourer engaged for unloading were in fact hired by the driver of the lorry. The learned Judge has taken the view that as the

bringing of raw hides and skins to the appellant's factory premises is a continuing requirement in order to keep the appellant' s factory functioning. The business of the appellant being that of processing of raw hides and skins, the engagement of workmen for unloading the raw hides and skins brought to its premises by lorries is a continuous requirement and the wages paid to such persons is part of the total wages paid out by the employer on which contribution is payable.

3. Learned counsel for the appellant submitted that the evidence of the witness who claimed that the money was paid to those workmen by the driver and not by the appellant should have been believed and on that basis the claim for contribution should have been rejected. Even if we were to agree with the said submission that the driver had disbursed the wages to those persons who did the unloading work, that would only make him the immediate employer and the liability for payment of wages would still remain on the principal employer.

4. Section 2.9 of The Employees' State Insurance Act, 1948, hereinafter referred to as the 'Act', defines 'employee' as meaning any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and --

"(i) .....

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) ...."

This definition makes it abundantly clear that the persons engaged through an immediate employer are also employees for the purpose of the Act and therefore the liability for payment of contribution on the wages paid to such employees is on the employer.

5. We may also, in this context, notice the definition of the immediate employer in Section 2.13 of the Act which reads as under:

" 2 (13) "immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer [and includes a contractor]. "

That definition is in wide terms and includes persons who are engaged in doing any work which is even preliminary to the work carried or incidental to the performance of the factory or establishment.

6. The Supreme Court considered this definition in the case of M/s.

Rajakamal Transport & another vs. The Employees' State Insurance Corporation, Hyderabad, [1996(2) L.L.J. 435]. That was a case of a transporter who had engaged casual labourers for the purposes of loading the lorries. The Court after referring to the earlier decision of the Apex Court in the case of Royal Talkies Hyderabad & Others vs. Employees' State Insurance Corporation [1978 (2) LLJ 390], E.S.I. Corporation vs. South Flour Mills [1986 (2) S.C.R. 863] and Kirloskar Brothers Ltd. vs. Employees' State Insurance Corporation [1996 I L.L.J. 1156] held that even though the transporter collected the wages paid to the labourers from those who had entrusted the goods for the purpose of transport, what was important for deciding as to whether contribution was payable on such payment was as to whether the loaders had worked "in connection with the work of the establishment".

7. In the case of Royal Talkies, Hyderabad and others vs. Employees State Insurance Corporation (1978 II LLJ 390) the Court held that the employees of a cycle stand and in a canteen of a cinema theatre are employees covered by the Act. While so holding the Court took note of the fact that narrow construction of the definition of the employee was possible but the definition had to be interpreted having regard to the object of the statute and that object was to make the principal employer primarily liable for the insurance of all kinds of employees on the premises where they are there in the work or are merely in connection with the work of the establishment.

8. In the case of South Flour Mills, cited supra, it was held that casual employees are covered by the definition in Section 2(9) of the Act.

9. Learned counsel for the appellant / employer sought to rely on the decision of the Supreme Court in the case of Employees State Insurance Corporation vs. Premier Clay Products [1995 S.C.C. (L & S) 162] wherein by a short order the Court held that where the work itself was of a sporadic nature and the coolies engaged in performing that work worked for several others, such coolies could not even be called casual workmen and hence no contribution would be payable on the wages paid to such persons. Counsel also relied on a judgment of the High Court at Bombay in the case of Parle Bottling Company (Private) Ltd. vs. Employees' State Insurance Corporation, Bombay, [1989 II LLN 494]. It was held therein that coolies are sel f employed labourers acting on their own responsibility, that there is no master and servant relationship between such coolies and the persons who engage them, and that such fleeting labourers can never avail themselves of the benefits under the Act. It was observed by the Court by Sawant, J. in that case that, "It will be ridiculous to expect that every time the salesmen engage coolies, they require them to fill in the declaration form for the issue of temporary identification certificate which would ultimately be converted into an identity card entitling them to the benefits under the Act."

10. Learned counsel for the Corporation invited our attention in this context to the judgment of the Supreme Court rendered by the very same learned Judge, in the case of Employees' State Insurance Corporation vs. M/s. Harrison Malayalam Pvt. Ltd. (A.I.R. 1993 S.C. 2655). The Court in that decision rejected the argument of the employer that the obligation to make contribution cannot be enforced when the person in respect of whose wages the contribution is made is not able to avail the benefits provided under the E.S.I. Act. The Court observed that,

" On the admitted fact that the respondent-Company had engaged the contractor

to execute the work, it was also the duty of the respondent-company to get the temporary identity certificates issued to the employees as per the provisions of regulations 12, 14 and 15 of the Employees State Insurance (General) Regulations, 1950 and to pay the contribution as required by Section 40 of the Act. Since the respondentcompany failed in its obligation, it cannot be heard to say that the workers are unidentifiable. ..... Since the workmen in fact were engaged by the contractor to execute the work in question and the respondent-company had failed to pay the contribution, the appellant Corporation was entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired. .....
"

In the same decision the Court further observed that,
" The scheme under the Act for insuring the workmen for conferring on them benefits in case of accidents, disablements, sickness, maternity, etc. is distinct from the contract of insurance in general. Under the Act, the scheme is more akin to group insurance. The contribution paid entitles the workmen insured to the benefits under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of these benefits. The contribution paid by him and by his employer is credited to the Insurance Fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment. What is more, there is no relation between the contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risk against which the workmen stands statutorily insured. It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment."
It is thus evident that even in a case where the person, to whom wages was paid and on which the contribution is sought, is not in a position to avail the benefits provided under the Act, nevertheless the employer is not relieved from the obligation to pay the contribution. The benefit of the contribution would become part of a fund available for use for the benefit of workmen who are eligible to claim the benefit under the Act.
11. In the case of the appellant, the work of unloading the lorries in which the raw hides and skins are brought is a work which is connected with, incidental to, and is also preliminary to the work carried on in the factory. Without raw hides and skins the appellant's factory cannot function at all. The bringing of the raw hides and skins is not a one time affair; is not an event which is sporadic in nature but, is a continuous one as without regular supply of raw material the factory cannot possibly function and manufacture the end product for making of which, the factory itself has been established. It is for the Corporation to work out a proper scheme so as to enable such casual labourers also to secure the benefits provided under the Act.
13. The employer cannot, on the score that such casual labourers presently do not benefit from the provisions of the Act, gain immunity from paying the contribution on the wages paid to such workmen. The appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes
Website : Yes
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To,

1. The Addl. District Judge,
(E.S.I. Judge)
Erode. (with records)

2. The record keeper,
VR Section, High Court,
Madras.